Some states are more strict than others in the regulation of acrobatic aeronautics. For example, the Connecticut statute provides that there is to be no stunt flying except over a known or recognized field, in Maine an aircraft may not be operated over buildings, persons or animals in such a manner as to endanger the life of the pilot or the safety of those below, while in California aerial acrobatics are prohibited at an altitude of less than 1500 feet, over populated districts and over an enclosure at an exhibition, that is not closed to spectators. The Connecticut and Kansas statutes prohibit the dropping of any matter except over places established for the purpose, and the former has an unique provision giving lighter-than-air aircraft the right of way over aereoplanes and requiring that aircraft turn to the right in passing one another.

RIGHTS OF SAVINGS DEPARTMENT DEPOSITORS AGAINST GENERAL ASSETS OF A TRUST COMPANY UNDER A STATUTE MAKING THEM SECURED CREDITORS AS TO SPECIFIC ASSETS.—By statute in Massachusetts[1] the deposits in the savings department of a trust company and the investments made with them are to be appropriated solely to the payment of such deposits and shall not be mingled with other funds or entered in the same accounts. The capital stock of such company with the liabilities of the stockholders thereunder is held as security for the payment of the deposits and in addition to this statutory security the persons making such deposits have an equal claim with the other creditors upon the capital and other property of the corporation. In a recent case[2] the Commissioner of Banks, liquidating an insolvent trust company, petitioned the court for authority to pay the savings department depositors out of commercial department funds on the face of the several claims without deduction of the value of the security, whether realized or not. The court refused to grant the authority requested and held that the savings bank depositors could share with the general creditors only for the balance of their claims after deducting the value of the property specially appropriated for their security.

The case raised a question of statutory interpretation that has long troubled the courts. What is the content and nature of this "equal" claim upon the other assets that is given to the secured creditors? The answer to this question depends on the extent to which a secured creditor may also consider himself a general creditor. Two basically different solutions present themselves.[3] Either he can (1) realize on the security or deduct its value and prove for or collect dividends upon the remainder of the claim,[4] or (2) prove for the entire claim as of the time of insolvency or of the time of the filing of the proof of claim, and use the security to cover the deficit, returning any surplus.[5] The former rule has been embodied in several state insolvency statutes.[6] It is also the rule

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[1] Mass. Gen. Laws (1921) c. 172, §§ 60-64.

[2] *Petitions of Allen, Commissioner of Banks* (Mass. 1922) 136 N. E. 269.

[3] In *Merrill* v. *National Bank of Jacksonville* (1899) 173 U. S. 131, 135, 19 Sup. Ct. 360, the four different rules dealing with the rights of creditors holding collateral security in the distribution of insolvent estates, are listed. The rules differ as they are based upon one or the other of the two views presented.

[4] *Merchants' National Bank* v. *Eastern R. R.* (1878) 124 Mass. 518; *Butler* v. *Commonwealth Tobacco Co.* (1908) 74 N. J. Eq. 423, 70 Atl. 319.

[5] *Merrill* v. *National Bank of Jacksonville, supra,* footnote 3; *People* v. *Remington* (1890) 121 N. Y. 328, 24 N. E. 793. But in interpreting N. Y., Laws 1914, c. 36, § 15 (Debtor and Creditor Law, § 15) the contrary was held in the case of a general assignment. *Matter of Vietor* (1917) 101 Misc. 317, 166 N. Y. Supp. 1018; *aff'd* (1918) 224 N. Y. 707, 121 N. E. 896.

[6] Many such statutes have been passed and the following will serve as examples: Cal., Stat. 1895, c. 143, § 48; Me., Laws 1878, c. 74, § 24; Conn., Acts 1853, c. 60, § 19.

under the Federal Bankruptcy Act of 1898[7] which provides that: "The value of securities held by secured creditors shall be determined . . . and the amount of such value shall be credited upon such claims and a dividend shall be paid only on the unpaid balance." The latter rule has frequently been called the "equity" rule to distinguish it from the former termed the "bankruptcy" rule. Where state statutes have provided only for ratable or pro rata distribution of insolvents' or decedents' estates, the courts have frequently permitted a secured creditor to receive dividends on his entire claim at the time of insolvency,[8] or at the time of proving the claim.[9]

A problem somewhat similar to that of the principle case arose in New Hampshire[10] under a statute[11] of less precise terms. The question discussed was the existence of any claim at all on the part of the savings bank depositors as against the general assets, and the court held that such a claim existed for the amount of any deficit. But the contention that they ought to have had a claim for the full amount of their deposits seems never to have been urged.[12] In an early Massachusetts case[13] involving the distribution of the assets of the insolvent estate of a decedent under a statute providing for a settlement,[14] "in proportion to the sums to them (the creditors) respectively due and owing," secured creditors were obliged to deduct the value of their security and prove only for the balance. The later decisions of that state[15] have consistently upheld that principle which the court had no trouble in reading into the broad terms of the statute.

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[7] 30 Stat. 560, U. S. Comp. Stat. (1916) § 9641h.

[8] *Kellogg & Co.* v. *Miller* (1892) 22 Ore. 406, 30 Pac. 229; *Paddock* v. *Bates* (1886) 19 Ill. App. 470; *aff'd, Matter of Bates* (1886) 118 Ill. 524, 9 N. E. 257; *Allen* v. *Danielson* (1887) 15 R. I. 480, 8 Atl. 705, reversing *Knowles, Petitioner* (1880) 13 R. I. 90.

[9] *In re Barned's Banking Co.* (1868) L. R. 3 Ch. Ap. 769. But this was superseded by Judicature Act of 1875, § 10f, which expressly adopts the Bankruptcy rule.

[10] *Bank Commissioners* v. *Security Trust Co.* (1908) 75 N. H. 107, 71 Atl. 377.

[11] N. H. Pub. Stat. (1901) c. 165, § 18, which provided that "Trust companies . . . receiving such deposits . . . shall conduct the business as a separate department and that department shall be amenable to the laws governing savings banks."

[12] See also *Lippitt* v. *Thames Loan & Trust Co.* (1914) 88 Conn. 185, 192, 90 Atl. 369. Conn. Gen. Stat. (1918) c. 200, § 3928.

[13] *Amory* v. *Francis* (1820) 16 Mass. 308.

[14] Mass., Acts 1784, c. 2.

[15] See *Hale* v. *Leatherbee* (1900) 175 Mass. 547, 548, 56 N. E. 562, and cases there cited.